IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5867 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No @

STATE OF GUJARAT

Versus

DAHYABHAI KISHANBHAI SOLANKI

Appearance:

MS DS PANDIT AGP for Petitioners

MR JITENDRA MALKAN for Respondents

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 14/08/2001

ORAL JUDGEMENT

1. Heard the learned Assistant Government Pleader Ms. D.S.Pandit for the petitioners and learned counsel Mr.Jitendra Malkan for the respondents. The award of the Labour Court, Vadodara in Reference (LCV) No.248 of 1987 granting reinstatement to two workmen along with

backwages in a pay-scale is challenged by the petitioners in this petition under Articles 226 and 227 of the Constitution.

2. The main contention of the petitioners was that the petitioner No.2 is an educational and training institute and, therefore, the provisions of the Industrial Disputes Act were not applicable to it. The second contention was that the Labour Court had, in making of the impugned order, travelled far beyond the terms of the reference and not only ordered reinstatement with backwages, but fixed the cadre and pay-scale of the respondent-workmen. It was fairly conceded and stated at the Bar that the issue of the petitioner being a training institute which was not covered by the definition of "industry" involved questions of fact and there was hardly any evidence on record to support the submission that the petitioner Institute was not an "industry". There is no dispute about the fact that the respondent-workmen were working as sweepers since July 1982 till the end of the year 1987 and one of them was even continued further till June 1988 although the service was contended to be intermittent and under different appointment orders. It was the contention of the respondents that they continued to work full time even when the orders of appointment were for part-time work. After appreciation of evidence, the Labour Court has come to the conclusion that the respondents had put in continuous service at the end of which, without complying with the relevant mandatory provisions of the Industrial Disputes Act, the services of the respondents had come to be terminated. However, the Labour Court went further and examined the service conditions of the respondents as also the other contentions and opined that the respondents should be awarded the status of class-IV employees with all the concomitant benefits. Thus, allowing the reference, the status of class-IV sweepers and pay-scale of Rs.750-840 with backwages from 1.6.1988 are also awarded by the impugned award.

3. In these facts, it is obvious that the Labour Court travelled beyond the terms of the reference and has given directions without jurisdiction which calls for intervention by this Court.

4. The learned counsel for the respondents fairly conceded that, in view of the fact that during the pendency of these proceedings the respondents are already reinstated and they are at liberty to raise the other demands and dispute as regards their service conditions,

the order of reinstatement may be maintained with 50% of backwages from 1.6.1988 to 1.12.1999. Accordingly, in the peculiar facts and circumstances of the case, the impugned award is modified and substituted with the order that the respondents shall be reinstated with 50% backwages for the period from 1.6.1988 to 1.12.1999 to be calculated on the basis of the last salary drawn by the respondents at the time of their termination. The respondents shall, however, have the liberty to raise the demands and dispute as regards their service conditions, regularisation or grant of pay-scale on the basis of

continuity of service since their original appointment. Accordingly, the petition stands allowed and Rule is made absolute in the above terms with no order as to costs.

Sd/-

14.8.2001 (D.H.Waghela, J.)

(KMG Thilake)